

BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER DISABILITY
DECISION NO. 642 AS A PRECEDENT
DECISION PURSUANT TO SECTION
409 OF THE UNEMPLOYMENT
INSURANCE CODE.

In the Matter of:

PRECEDENT
DISABILITY DECISION
No. P-D-391

FORMERLY DISABILITY DECISION No. 642
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The claimant appealed from Referee's Decision No. SF-D-11299 which held that the claimant was ineligible for further disability benefits because she had exhausted her maximum award of benefits. The claimant submitted written argument.

STATEMENT OF FACTS

The claimant last worked in her usual occupation as a legal stenographer on June 24, 1960. She left this work because of a traumatic amputation of the tip of her left fifth finger. She was hospitalized on June 25, 1960 for corrective surgery and discharged the next day. Effective June 25, 1960, the claimant filed a claim for disability benefits with the Department of Employment and established a maximum potential award of \$1378 payable at the rate of \$53 a week. Because of the receipt of wages from the employer through June 30, 1960, the claimant's first compensable day for basic benefits was July 1, 1960, with no waiting period established because of her hospitalization. The claimant's physician at first estimated that the claimant would recover from this disability on August 29, 1960. He subsequently extended his estimate of the period of disability to September 2, 1960, September 26, 1960, October 10, 1960, and finally, on October 12, 1960, to October 24, 1960. The claimant planned to return to work on October 24, 1960.

Before recovery from this first disability, the claimant fractured her left ankle on October 16, 1960. She was hospitalized from October 17, to October 19, 1960 in order that the fracture could be reduced and a walking cast applied. Her physician estimated that she would recover from this second disability on February 2, 1961. A claim for disability benefits was filed in connection with this second disability and benefits were paid through December 29, 1960, at which time the claimant's maximum award was exhausted. The claimant continued to be disabled thereafter because of her ankle although she had returned to work on a part-time basis by February 24, 1961, the date of the hearing before the referee. The department denied further disability benefits beginning December 30, 1960 under section 2653 of the Unemployment Insurance Code. The claimant contends that she should have further benefits because she suffered two different disabling conditions.

The question presented to us for consideration is whether the claimant was entitled to establish a new disability benefit period in connection with the injury to her ankle which occurred while the claimant was still disabled and eligible for disability benefits because of a separate and distinct injury to her finger.

REASONS FOR DECISION

Sections 2653 and 2608 of the Unemployment Insurance Code provide as follows:

"2653. The maximum amount of benefits payable to an individual during any one disability benefit period shall be 26 times his weekly benefit amount."

"2608. 'Disability benefit period,' with respect to any individual, means the continuous period of unemployment and disability beginning with the first day with respect to which the individual files a valid claim for unemployment compensation disability benefits. For the purposes of this part, two consecutive periods of disability due to the same or related cause or condition and separated by a period of not more than 14 days shall be considered as one disability benefit period."

Section 2608-1 of Title 22 of the California Administrative Code provides as follows:

"2608-1. Continuous Period of Unemployment and Disability. A continuous period of unemployment and disability ends:

(a) When an individual returns to and is able to perform his regular or customary work for a period of more than fourteen (14) days or

(b) In the case of an unemployed individual when his physician furnishes a statement giving the date, in his opinion, that the individual was able to perform his regular or customary work for a period of more than fourteen (14) days."

In Disability Decision No. 549, the claimant was disabled due to acute pylorospasm and acute ulcer. He established a disability benefit period effective August 24, 1954 and received weekly benefits for the following 26 weeks until his maximum award was exhausted. The claimant was advised by his physician that he could return to work on or before March 15, 1955. On Saturday, March 5, 1955, the claimant arranged with his former employer to return to work on March 7, 1955. Upon leaving his employer's plant for the purpose of securing a formal release from his physician, the claimant was struck down by a bicycle and suffered a fractured zygoma for which he was hospitalized. We held that the department's regulation (22 Cal. Adm. Code 2608-1) would be invalid if it purported to substitute a physician's judgment for that of the department, the referee, or the Appeals Board, and that the evidence established that the claimant had recovered from his first disability, ending his disability benefit period, before he suffered his second disability. Therefore, he was entitled to establish a new disability benefit period in connection with his second disability.

In the present case, the evidence established that the claimant had not recovered from her first disability before she received her second disabling injury. Since she suffered a continuous period of unemployment and disability, although from overlapping disabling conditions, only one "disability benefit period" is involved under the express language of the statute. Therefore, we hold that the claimant was not entitled to establish a new disability benefit period in connection with her second disability because she had been continuously

disabled since the establishment of her first disability benefit period. Having established but one disability benefit period, and exhausted her maximum award for that period, she was entitled to no further disability benefits (Disability Decision No. 569).

DECISION

The decision of the referee is affirmed. The claimant was not entitled to further disability benefits under sections 2608 and 2653 of the code.

Sacramento, California, May 19, 1961.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ERNEST B. WEBB, Chairman

ARNOLD L. MORSE

GERALD F. MAHER

Pursuant to section 409 of the Unemployment Insurance Code, the above Disability Decision No. 642 is hereby designated as Precedent Decision No. P-D-391.

Sacramento, California, May 23, 1978.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

HARRY K. GRAFE

RICHARD H. MARRIOTT

HERBERT RHODES